



The Commission's Recommendation and Order found that the opinions of treating physician Dr. Fullmer and expert toxicologist Dr. Munday were consistent with each other, and established that Claimant's September 12, 2000 exposure did not cause any symptoms or condition which would have reasonably required medical care. The Commission concluded that Claimant failed to show that the symptoms for which she sought medical attention probably were related to the exposure to the odor she experienced on September 12, 2000. The Commission did find Defendants liable for Claimant's initial six-week period of medical benefits as an expense of investigating the compensability of the claim.

In the motion for reconsideration, Claimant argues that the Commission's decision is not based on substantial competent evidence, and the findings do not as a matter of law support the order and award. Defendants aver that Claimant is merely asking the Commission to reweigh the evidence and come to a different conclusion.

A decision of the Commission, in the absence of fraud, shall be final and conclusive as to all matters adjudicated, provided that within 20 days from the date of the filing of the decision, any party may move for reconsideration. Idaho Code § 72-718. However, "it is axiomatic that a claimant must present to the Commission new reasons factually and legally to support a hearing on her Motion for Rehearing/Reconsideration rather than rehashing evidence previously presented." Curtis v. M.H. King Co., 142 Idaho 383, 388, 128 P.3d 920 (2005).

On reconsideration, the Commission will examine the evidence in the case, and determine whether the evidence presented supports the legal conclusions. The Commission is not compelled to make findings on the facts of the case during reconsideration. Davison v. H.H. Keim Co., Ltd., 110 Idaho 758, 718 P.2d 1196. The Commission may reverse its decision upon a motion for reconsideration, or rehearing of the decision in question, based on the arguments

presented, or upon its own motion, provided that it acts within the time frame established in Idaho Code § 72-718. *See, Dennis v. School District No. 91*, 135 Idaho 94, 15 P.3d 329 (2000) (citing Kindred v. Amalgamated Sugar Co., 114 Idaho 284, 756 P.2d 410 (1988)).

A motion for reconsideration must be properly supported by a recitation of the factual findings and/or legal conclusions with which the moving party takes issue. However, the Commission is not inclined to re-weigh evidence and arguments during reconsideration simply because the case was not resolved in a party's favor.

Claimant contends she contracted reactive airway disease syndrome (RADS) as a result of her inhalation injury. RADS is a subset or form of asthma related to a toxic irritant exposure. Claimant argues that she has proven the eight criteria for diagnosing RADS. Claimant points to facts that support her argument including the testimony of Dr. Carveth, a pulmonologist. While there is support for the argument, ultimately the Commission was persuaded by the opinions of treating Dr. Fullmer and Defendants' expert Dr. Munday that Claimant suffered from GERD.

Claimant argues that she proved that her symptoms were related to the exposure on September 12, 2000 because she had no prior medical evidence establishing asthma or respiratory problems. While there are not many prior medical records available, Dr. Munday found that some cases of GERD are not always obvious until they become severe. Based on the medical evidence presented Drs. Fullmer and Munday diagnosed that Claimant suffers from GERD instead of RADS.

The Commission does not dispute that Claimant smelled an odor at work, but the smell was from an unknown substance blown by a fan from over 15 feet down a hallway. Claimant concluded that she had inhaled a toxic substance. Claimant's initial treating doctor opined that Claimant's symptoms were inconsistent with exposure to inhaled sulfuric acid.

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Claimant also avers that the evidence does not support the opinions of defense experts. While the Commission fully acknowledges that there is medical evidence to supports both parties in this case, the Commission found Dr. Munday's report thorough and his testimony persuasive. Claimant's initial complaint was for a cough, a burning sensation in her nose, and no mention of eye irritation. Dr. Munday explained how gastroesophageal reflux disease (GERD) was more consistent given these facts than chemical inhalation and was likely the cause of Claimant's cough and sensation in her lungs and throat.

The Commission has reviewed the record with a focus on the concerns that Claimant has raised in the motion for reconsideration and we still feel that the facts support the decision. The Commission's analysis took into account all the documentary evidence and testimony and found that the opinions of treating physician Dr. Fullmer and expert toxicologist Dr. Munday were consistent with each other, and established that Claimant's September 12, 2000 exposure did not cause any symptoms or condition which would have reasonably required medical care. Although Claimant disagrees with the Commission's findings and conclusions, the Commission finds the decision of November 3, 2009, is supported by substantial evidence in the record and Claimant has presented no persuasive argument to disturb the decision.

Based upon the foregoing reasons, Claimant's Motion for Reconsideration is DENIED.

IT IS SO ORDERED.

DATED this \_\_14th\_\_ day of January, 2010.

INDUSTRIAL COMMISSION

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R.D. Maynard, Chairman

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/s/  
Thomas E. Limbaugh, Commissioner

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/s/  
Thomas P. Baskin, Commissioner

ATTEST:

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/s/  
Assistant Commission Secretary

### CERTIFICATE OF SERVICE

I hereby certify that on \_\_14<sup>th</sup> day of January, 2010, a true and correct copy of the foregoing **ORDER DENYING RECONSIDERATION** was served by regular United States Mail upon each of the following:

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/s/